



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-2191

9-194A003

Writer's Direct Dial Number

804/629-2818

July 10, 1989

Ms. Noreta McGee
Secretary
Interstate Commerce Commission
Washington, DC 20412

16424
RECORDATION NO. FILED 1425

JUL 13 1989 -9 30 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

I enclose four original counterparts of the document described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49 of the U.S. Code.

In accordance with 49 CFR Part 1177 covering the recordation of documents, I advise you as follows:

- (1) The enclosed document is a Temporary Use Agreement dated as of July 1, 1989 between Trinity Industries, Inc., 2525 Stemmons Freeway, Dallas, Texas 75207, Bailor, and Norfolk and Western Railway Company, Three Commercial Place, Norfolk, Virginia 23510, Bailee.
- (2) The enclosed document is a "primary document" under 49 CFR § 1177.1.
- (3) No cross-indexing of the enclosed document is requested.
- (4) The enclosed document was executed to evidence the grant by the Bailor to the Bailee of a temporary right to the use of certain railroad equipment, being:

1,000 100-ton, 3600 cu. ft. capacity open top hopper cars, bearing the Bailee's initials and road numbers NW 144000 through NW 144999, both inclusive, AAR designation HT.

Ms. Noreta McGee
Page 2
July 10, 1989

Each unit will be marked in letters not less than one inch in height with the words:

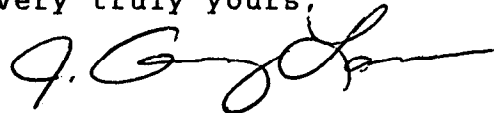
OWNERSHIP SUBJECT TO A SECURITY
AGREEMENT FILED WITH THE
INTERSTATE COMMERCE COMMISSION.

- (5) The names and addresses of the parties to the enclosed document are shown in paragraph (1) hereof.
- (6) After recordation, the three original counterparts of the enclosed document not required by the Commission for recordation should be returned to our messenger who delivered this letter.
- (7) The recordation fee of \$13 is enclosed.
- (8) A short summary of the enclosed document for index use follows:

This is a Temporary Use Agreement dated as of July 1, 1989, between Trinity Industries, Inc., as Bailor, and Norfolk and Western Railway Company, as Bailee, covering 1,000 100-ton open top hopper cars bearing Bailee's initials and road numbers NW 144000 through NW 144999, both inclusive.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,



J. Gary Lane

JGL/dps
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

7/13/89

OFFICE OF THE SECRETARY

J. Gary Lane
Norfolk Southern Corp
Law Dept.
Three Commercial Place
Norfolk, Virginia 23510-2191

Dear: Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/13/89 , at 9:30am , and assigned recordation number(s). 16424

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16424
RECORDATION NO. _____ FILED 1425

JUL 13 1989 -9 30 AM

INTERSTATE COMMERCE COMMISSION

TEMPORARY USE AGREEMENT

Dated as of July 1, 1989

between

TRINITY INDUSTRIES, INC.

and

NORFOLK AND WESTERN RAILWAY COMPANY

Executed in six Counterparts of
which this is Counterpart No. 2

THIS AGREEMENT, dated as of July 1, 1989, by and
between TRINITY INDUSTRIES, INC., a Delaware corporation (the
"Vendor"), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia
corporation (the "Railroad")

WITNESSETH:

THAT

WHEREAS, Railroad desires to acquire 1,000 new 100-ton, 3,600
cu. ft. capacity Open Top Hopper Cars, to bear Railroad's road
numbers NW 144000 through 144999, both inclusive, such cars
being hereinafter collectively called the "Units"; and

WHEREAS, Railroad, by Purchase Order numbered RSWI00 [the
Purchase Order], has contracted with Vendor to build these
Units; and

WHEREAS, the Vendor, under the terms of the Purchase Order, is
to deliver the Units to Railroad at Clairton, Pennsylvania,
freight charges, if any, prepaid and included in Vendor's
invoice; and

WHEREAS, inasmuch as Railroad has not yet consummated financing
arrangements for the acquisition of the Units, it is not in a
position to accept delivery of the Units at this time; and

WHEREAS, Railroad anticipates that the above-described financing
arrangements will be consummated on or before January 10, 1990,
and Railroad, in order that it may take possession of and use
the Units pending completion of such financing arrangements,
has requested Vendor to grant Railroad temporary possession of
and the right to use the Units pursuant to the terms of this
Agreement; and

WHEREAS, Vendor is willing to grant such right to use the Units
upon the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises and of the
promises of the parties herein contained, the parties agree as
follows:

1. Vendor hereby agrees to deliver the Units to the Railroad at the delivery point above referred to. The rights of Railroad hereunder in respect of each Unit shall commence on the date of acceptance of such Unit from the Vendor and end on the earlier of January 10, 1990 or the date of payment of the purchase price of such Unit by Railroad, its designee, or by a Trustee under the above-mentioned financing arrangements. Railroad shall purchase such accepted Units from Vendor or provide a purchaser therefor on or before January 10, 1990, and Vendor shall sell such Units to Railroad or such purchaser as Railroad may provide, at the total purchase price as set in the Purchase Order (plus storage charges, if any) as it relates to such Units, and the obligation of each so to do shall be absolute, regardless of the condition of such Units at such time. On acceptance of each Unit by Railroad, Railroad will assume the responsibility and risk of loss with respect to such Unit.

2. Title to the Units shall remain in Vendor and Railroad's right and interest therein is and shall be solely that of temporary possession, custody, and use under this Agreement. The Railroad or any third party acquiring an interest in the Units by reason of the contemplated financing of the purchase price of the Units by the Railroad shall not by virtue of this Agreement or the temporary possession and use of the Units by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Units, acquire any title to or ownership of the Units, or any portion thereof, and title to or ownership of the Units shall remain solely in the Vendor. Transfer of title to any Unit to the Railroad or to any purchaser provided by the Railroad shall be effected only at the time of delivery by the Vendor of a bill of sale to the Railroad or to such purchaser. When the purchase price of any Unit has been paid in full to Vendor and Vendor has delivered an appropriate bill of sale and returned or applied any related security deposit as hereinafter provided, this Agreement shall automatically be terminated with respect to such Unit without further action by or notice to any party concerned. Railroad shall do such acts as may be required by law, or reasonably requested by Vendor, for the protection of Vendor's title to and interest in the Units.

3. This Agreement is a financial arrangement, under which Railroad will have temporary possession, custody, and use of the Units to be purchased from Vendor, and the risk of loss of the Units after acceptance is on the Railroad. At the time of delivery of the Units, the Railroad shall be entitled, as between Railroad and Vendor, to the Modified Accelerated Cost Recovery System (MACRS) deduction under Section 168 of the Internal Revenue Code of 1986, and the Vendor shall not be entitled to such MACRS deduction.

4. Railroad will deposit or cause to be deposited with the Vendor pursuant to the Vendor's instructions an amount which (together with amounts theretofore deposited or caused to be deposited by Railroad with Vendor) shall equal the purchase price of the Units to be delivered hereunder. These deposits will constitute security deposits securing the ultimate payment of the purchase price upon transfer of title to the Units. Such security deposits in respect of the Units will be made within five (5) business days after the first day of each month for Units accepted during the preceding month.

5. Any security deposits advanced to the Vendor by or on behalf of the Railroad to secure payment of the purchase price of the Units may be retained and used by Vendor until payment of the purchase price is made, and such deposits shall, at the election of the Railroad, either be applied toward payment of the purchase price or be returned to the Railroad at the time such payment is made.

6. Railroad agrees that it will permit no liens of any kind to attach to the Units, and that it will (a) indemnify and save harmless Vendor from and against all claims, expenses, or liabilities of whatsoever kind (except claims or liabilities based on or arising out of any breach of warranty or any defect in the Units), arising out of retention by Vendor of title to the Units or out of the temporary possession, use and operation thereof by Railroad during the period when title thereto remains in Vendor, and (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Units or the Vendor because of its ownership or because of the use, marking, operation, management or handling of the Units by Railroad while title to such Units remains in Vendor pursuant to this Agreement.

7. Railroad will, at its own expense, keep and maintain the Units in good order and running condition and will, at its option, repair or replace or promptly pay to Vendor the purchase price in cash of those Units which may be damaged or destroyed by any cause during the term that this Agreement applies to such Units.

8. Prior to the delivery of any Unit to Railroad it will be numbered with its appropriate road number; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Railroad upon each side of each Unit in letters not less than one inch in height the following words:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

or other words of equivalent import approved by the Railroad.

Railroad may also cause the Units to be lettered with the name, initials or insignia of Railroad or any affiliate of Railroad or in such other ways as are appropriate for convenience of identification of the interest of the Railroad therein.

9. Vendor shall have the right to assign its rights under this Agreement or under the Purchase Order pursuant to the financing arrangements referred to above.

10. Subject to this Agreement and the rights of Vendor hereunder, and without releasing Railroad from any of its obligations hereunder, Railroad shall have the right to assign or transfer its rights hereunder, or in particular Units hereunder, to any affiliate of Railroad.

11. The Vendor agrees that, upon receipt of all payments to be made or caused to be made to it by the Railroad under this Agreement, it shall upon request execute and deliver to or upon the order of Railroad bills of sale for the Units in customary form with full warranty of title, free and clear of all liens and encumbrances.

12. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Vendor and the Railroad have caused this instrument to be signed and acknowledged by their proper officers and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

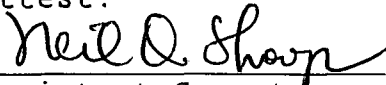
TRINITY INDUSTRIES, INC.

By: 

Vice President

L.S.

Attest:


Assistant Secretary

NORFOLK AND WESTERN RAILWAY COMPANY

By: 

Vice President

L. S.

Attest:


Assistant Secretary

STATE OF Texas]
COUNTY OF Dallas] ss:

On this 11th day of July, 1989, before me personally appeared F. Dean Phelps, to me personally known, who, being by me duly sworn, says that he is the Vice President of TRINITY INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Beverly Baldridge
Notary Public

My commission expires: 11/30/89

COMMONWEALTH OF Virginia]
CITY OF Norfolk] ss:

On this 6th day of July, 1989, before me personally appeared John R. Turbyfill, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORFOLK AND WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joanie B. Davis
Notary Public

My commission expires: June 16, 1991